

# In the United States Court of Federal Claims

## **AMENDED GENERAL ORDER No. 40 ADR PILOT PROCEDURES**

1. The parties shall comply with the following ADR pilot procedures in all ADR pilot cases.
2. The ADR judge shall be appointed upon the filing of the complaint.
3. Involvement by the ADR judge is triggered by the filing of the Joint Preliminary Status Report (JPSR) with the trial judge and the simultaneous filing with the ADR judge of: (a) the JPSR required by Appendix A to the court's rules, and (b) all pleadings. Notwithstanding the foregoing, the parties and the trial court judge may agree to an earlier meeting with the ADR judge.
4. On the same date that the JPSR and the pleadings are filed with the ADR judge, the parties shall also file with the ADR judge (and provide a copy to the trial judge) a Joint Motion to Schedule the Early Neutral Evaluation "ENE" (ADRP1).
5. Upon issuance of the ADR judge's order scheduling the ENE, the parties shall execute and submit to the ADR judge the attached ADR Confidentiality Agreement.
6. Within ten (10) days after the conclusion of the ENE conference(s), the parties shall file with the trial judge (and provide a copy to the ADR judge) either a Joint Motion for a Stay to Conduct Further ADR Proceedings to Allow the Parties to Negotiate (ADRP2) or a Joint Notice of Intention to Proceed with the Trial Judge (ADRP3).
7. At the conclusion of the ENE, if the parties do not continue with negotiations, the parties shall complete discovery. Upon completion of discovery, the parties shall: (a) file with the trial judge (with a copy to the ADR judge) a Joint Notification of Close of Discovery (ADRP4) and (b) file with the ADR judge (with a copy to the trial judge) a Joint Motion to Schedule Post-Discovery Meeting with the ADR Judge (ADRP5).
8. Within ten (10) days after the post-discovery meeting, the

parties shall file with the trial judge (and provide a copy to the ADR judge) either a Joint Motion for a Post-Discovery Stay to Conduct Further ADR Proceedings (ADRP6) or a Joint Motion to Proceed With Trial requesting a schedule for pre-trial submissions (ADRP7).

9. The parties may jointly request that the trial judge refer the case to the ADR judge at any time. In addition, the parties may jointly propose to the trial court that they pursue their own ADR process.
10. The ADR judge may require the submission of information or the attendance of persons necessary to conduct proper ENE or post-discovery negotiations.
11. The ADR judge may meet with the parties *ex parte* in separate caucuses.
12. All information and documents submitted to the ADR judge for purposes of ADR will be kept confidential by the ADR judge, will not be included in the court's official file in the case, and will not be disclosed to any person who is not participating in the ADR process. However, information and documents not specifically prepared for or revealed in confidence in ADR, and otherwise discoverable and/or admissible, are discoverable and admissible as determined by the trial judge.
13. The ADR judge's opinions, files, and observations regarding the case shall not be shared or discussed with the trial judge unless both parties agree to the disclosure in writing to both the ADR and trial judge.

BY THE COURT

/s/  
EDWARD J. DAMICH  
Chief Judge

October 2, 2002

Date

# In the United States Court of Federal Claims

No. XX-XXXX **ADR PILOT**

\* \* \* \* \*

,

*Plaintiff,*

v.

THE UNITED STATES,

*Defendant.*

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## ADR CONFIDENTIALITY AGREEMENT

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The parties <sup>\*/</sup> agree that all ADR proceedings, including statements made and documents prepared by any party, attorney, or other participant, are privileged and shall not be disclosed in any subsequent proceeding or document or construed for any purpose as an admission against interest. However, information and documents not specifically prepared for or revealed in confidence in ADR, and otherwise discoverable and/or admissible, are discoverable and admissible as determined by the trial judge. The parties further agree not to subpoena or seek in any way the oral or written testimony of the ADR judge for any purpose in this or any other proceeding, or to subpoena or seek in any way any materials submitted to the ADR judge during the ADR process for use in this or any other proceeding.

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<sup>\*/</sup> All parties, along with their attorneys, who participate in the ADR proceedings shall sign this agreement.

No party shall be bound by anything said or done during ADR proceedings unless a settlement is embodied in a written agreement signed by all parties.

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Plaintiff's Attorney  
Address:  
Phone No:

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Defendant's Attorney  
Address:  
Phone No:

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Party Representative  
Address:  
Phone No:

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Agency Representative  
Address:  
Phone No:

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Date